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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,566	11/01/2001	Chana L. Weaver	5603USA	3780
30173	7590	06/21/2010	EXAMINER	
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440				ROBINSON BOYCE, AKIBA K
ART UNIT		PAPER NUMBER		
3628				
MAIL DATE		DELIVERY MODE		
06/21/2010		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHANA L. WEAVER,
LINDA J. THOMPSON,
DION L. KELLS, and
KURT W. NELSON

Appeal 2009-010916
Application 10/002,566
Technology Center 3600

Decided: June 18, 2010

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W. FETTING, *Administrative Patent Judges*.

FETTING, Administrative Patent Judge.

DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 Chana L. Weaver, Linda J. Thompson, Dion L. Kells, And Kurt W.
3 Nelson (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final
4 rejection of claims 5-8, 10-13, and 15-20, the only claims pending in the
5 application on appeal.

6 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
7 (2002).

8 SUMMARY OF DECISION¹

9 We AFFIRM.

10 THE INVENTION

11 The Appellants invented a system and method for integrating a variety of
12 data sources to provide product category management enabling retailers and
13 others to make more informed decisions concerning the procurement,
14 stocking, advertising, and/or selling of various products (Specification 1:4-
15 8).

16 An understanding of the invention can be derived from a reading of
17 exemplary claims 6, 11, 13, 15, and 20, which are reproduced below
18 [bracketed matter and some paragraphing added].

19 6. A category management method comprising:

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed October 23, 2008) and Reply Brief ("Reply Br.," filed March 25, 2009), and the Examiner's Answer ("Ans.," mailed January 26, 2009), and Final Rejection ("Final Rej.," mailed March 26, 2008).

1 [1] obtaining data from plural data sources including a
2 consumer purchase tracking data set and a demographics data
3 set;
4 [2] using automated analysis to analyze at least a portion of
5 said obtained data; and
6 [3] providing an integrated category management report
7 based at least in part on said analysis, said integrated category
8 management report being a targeted opportunity assessment and
9 market analysis at least partially customized for an intended
10 retailer end user.

11

12 11. The method of claim 7 further including providing a score
13 card that tracks said category management over time.

14

15 13. The method of claim 7 wherein said network is a local area
16 network.

17

18 15. The method of claim 6 wherein said integrated category
19 management report includes a pricing suggestion for at least
20 one product.

21

22 20. The method of claim 6 wherein at least one of said data sets
23 relates to cereal.

24

25 THE REJECTIONS

26 The Examiner relies upon the following prior art:

McConnell	US 2001/0049690 A1	Dec. 6, 2001
Johnson	US 2002/0082900 A1	Jun. 27, 2002
Dippold	US 2002/0133479 A1	Sep. 19, 2002

27

Appeal 2009-010916
Application 10/002,566

1 Claims 5-8, 10, 12, 15, and 18 stand rejected under 35 U.S.C. § 102(e) as
2 being anticipated by Johnson.

3 Claims 11 and 20 stand rejected under 35 U.S.C. § 103(a) as
4 unpatentable over Johnson and Dippold.

5 Claims 13, 16, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as
6 unpatentable over Johnson and McConnell.

7

ISSUES

9 The issue of rejecting claims 5-8, 10, 12, 15, and 18 under 35 U.S.C. §
10 102(e) as being anticipated by Johnson, turns on, whether Johnson describes
11 an integrated category management report, where the report is based on an
12 analysis of consumer transactional history and demographic data.

13 The issue of rejecting claims 11 and 20 under 35 U.S.C. § 103(a) as
14 unpatentable over Johnson and Dippold, turns on, whether the Appellants'
15 arguments in support of claim 6 are persuasive and whether Dippold
16 describes a score card.

17 The issue of rejecting claims 13, 16, 17, and 19 under 35 U.S.C. § 103(a)
18 as unpatentable over Johnson and McConnell, turns on, whether the
19 Appellants' arguments in support of claim 6 are persuasive and whether
20 there is a motivation to combine Johnson and McConnell.

21

FACTS PERTINENT TO THE ISSUES

2 The following enumerated Findings of Fact (FF) are believed to be
3 supported by a preponderance of the evidence.

4 *Facts Related to the Prior Art*

5 *Johnson*

6 01. Johnson is directed to a method and centralized system for the
7 automated generation of information directed to products of one or
8 more suppliers in response to user request criteria, collection of
9 market trend data directed to users of the system and distribution
10 of rebates certificates to the users as marketing incentives, through
11 real time database creation and analysis over the Internet (Johnson
12 ¶ 0002). The market research and user trend data, such as
13 information directed to solvents or products selected or excluded
14 by users, is forwarded to registered suppliers to allow the
15 suppliers to track customer preferences, thereby enhancing
16 information used in supplier business and marketing decisions
17 (Johnson ¶ 0008).

18 02. Johnson specifically describes a product information
19 generation, market research, and user trend data collection system
20 (Johnson ¶ 0022). Market research and user trend data is collected
21 automatically during utilization of the system (Johnson ¶ 0025).
22 User information is entered into demographics, preferences, and
23 biases database (Johnson ¶ 0025). Users can request a price
24 quotation from a supplier for products (Johnson ¶ 0034). Sales
25 lead data for suppliers is determined and forwarded to suppliers

1 (Johnson ¶ 0027). A supplier receives a market and trend data in
2 the form of a report (Johnson ¶ 0037). The report includes
3 information on users that specifically replace, exclude, or include
4 products made by the supplier (Johnson ¶'s 0037-0040). The
5 report can further include requests for quotes and requests for
6 samples by users (Johnson ¶'s 0041-0042).

7 *Dippold*

8 03. Dippold is directed to a market research database that facilitates
9 the management of, and access to, product categories (Dippold ¶
10 0001).

11 04. Dippold describes a system that receives and processes product
12 data from product suppliers (Dippold ¶ 0019). First and second
13 groups of data are compared to each other (Dippold ¶ 0026). The
14 intersection of the two groups is then determined (Dippold ¶
15 0029). Data mining software is run on the intersection of the data
16 sets (Dippold ¶ 0032). The data mining software generates a rule
17 file that contains scoring rules (Dippold ¶ 0032). The scoring
18 rules are if-then scoring rules and are generated for each
19 characteristic type and value (Dippold ¶ 0032). The scoring rules
20 are used to score categorized product data (Dippold ¶ 0033). The
21 scoring indicates whether there is an agreement between the
22 product categorizations provided by the product supplier and the
23 product categorizations resulting from the scoring as based upon
24 by the reference database (Dippold ¶ 0033).

1 *McConnell*

2 05. McConnell is directed to an item velocity monitoring system
3 that analyzes point-of-sale data for retail stores in real time to
4 determine if items are being sold faster than expected or slower
5 than expected, and which can also predict stock-outs in advance
6 and make accurate near-term sales forecasts for individual items at
7 the store level (McConnell ¶ 0001). McConnell is concerned with
8 the maintaining accurate inventory and the lost profits due to
9 current inaccurate inventory forecasting systems (McConnell ¶
10 0005).

11 06. McConnell describes an inventory management system that
12 monitors the receipt of items and detects the movement of items
13 and determines a probability pattern describing the velocity of the
14 item (McConnell ¶ 0012).

ANALYSIS

16 *Claims 5-8, 10, 12, 15, and 18 rejected under 35 U.S.C. § 102(e) as*
17 *being anticipated by Johnson*

18 The Appellants first contend that (1) Johnson fails to describe the
19 limitation to provide a report to increase sales or profits of a retailer in a
20 market category, as required by limitation [3] of claim 6 (App. Br. 11-12).
21 We disagree with the Appellants. First, limitation [3] of claim 6 only
22 requires an integrated category management report, where the report is based
23 on an analysis of consumer transactional history and demographic data.
24 Limitation [3] further requires that the report is a targeted opportunity
25 assessment and market analysis that is partially customized for an intended

1 retailer end user. Limitation [3] does not require a specific definition for an
2 integrated category management report or a targeted opportunity assessment.
3 The specification also fails to provide a definition for these terms. Under the
4 broadest reasonable construction, an integrated category management report
5 is nothing more than a report describing multiple categories. An opportunity
6 assessment is nothing more than any analysis that describes any type of
7 opportunity. This can include the opportunity to increase sales, profits,
8 efficiency, brand, number of products, or any other business opportunity. As
9 such, Appellants' argument that Johnson fails to describe a report to increase
10 sales or profits of a retailer in a market category is not found persuasive
11 because these requirements are not found in the claimed limitations. The
12 Appellants' argument that Johnson merely describes a zero sum game is not
13 found persuasive for the same reason.

14 However, even if the claims were to be construed to require these
15 specific definitions, we find that Johnson does describe these limitations.
16 Johnson describes a data collection system that receives inputs from users in
17 the form of project requests (FF 0102). The user's input is collected and
18 analyzed as market research and user trend data (FF 01). The user trend data
19 is forwarded to suppliers in the form of a report that consists of several
20 categories of data, such as which users replace, exclude, and/or include
21 products made by the supplier (FF 01-02). The suppliers use this
22 information as sales leads (FF 02). As such, Johnson describes providing a
23 report that contains sales leads information because it contains information
24 regarding user trends on multiple categories using market and user trend
25 data, i.e. an integrated category management report.

1 The Appellants further argue that the Advisory Action states that
2 Johnson only provides the report to users and suppliers and users are not the
3 actual users as required by the claims (App. Br. 11). However, the
4 Appellants fail to provide any rationale as to why suppliers are not retailer
5 end users. Limitation [3] does not require the report be partially customized
6 by retailers *and* users; it only requires the report be customized for retailer
7 *end* users. Johnson describes that a market and user trend report can be
8 generated for suppliers customized to the solvents that those suppliers sell
9 (FF 02). As such, the report is customized for that supplier and that supplier
10 is a retail end user.

11 The Appellants further contend that (2) Johnson fails to describe a report
12 that includes a price suggestion, as required by claim 15 (App. Br. 12). We
13 disagree with the Appellants. Johnson describes that users can request a
14 quote (RFQ) from a supplier for a product (FF 02). Johnson further
15 describes that these RFQs can be integrated into a report for a supplier to use
16 as a sales lead (FF 02). That is, the suppliers receive information on which
17 products the users have been requesting prices for and can further provide a
18 price based on these reports. That is, the suppliers are provided with
19 information to base their price. This is the same as a price suggestion
20 because the suppliers are provided with pricing data to base their price on.
21 As such, Johnson describes claim 15.

22 *Claims 11 and 20 rejected under 35 U.S.C. § 103(a) as unpatentable*
23 *over Johnson and Dippold*

24 The Appellants first contend that (1) Dippold fails to describe an
25 automated analysis and providing an integrated category management report

1 that is targeted opportunity assessment and market analysis at least partially
2 customized for the intended user, as required by limitation [3] of claim 6
3 (App. Br. 13). The Appellants further assert this argument in support of
4 claim 20 (App. Br. 13-14). We disagree with the Appellants. The Examiner
5 has relied on Johnson to describe the report, as discussed *supra*, and as such
6 the Appellants' argument does not persuade us of error on the part of the
7 Examiner because the Appellants are responding to the rejection by
8 attacking the references separately, even though the rejection is based on the
9 combined teachings of the references. Nonobviousness cannot be
10 established by attacking the references individually when the rejection is
11 predicated upon a combination of prior art disclosures. *See In re Merck &*
12 *Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

13 The Appellants further contend that (2) Dippold describes scoring rules
14 but fails to describe a score card, as required by claim 11 (App. Br. 13). We
15 disagree with the Appellants. Dippold describes data mining software that
16 analyzes the intersection of two sets of product data (FF 04). The data
17 mining software uses a scoring file that defines scoring rules to be used in
18 the analysis and the software assigns a score to the data elements (FF 04).
19 The use of scoring rules and the assignment of a score based on criteria is
20 the same function a score card provides. Although Dippold does not use the
21 term "score card," Dippold describes the same functionality using scoring
22 rules and the assignment of a score. As such, Dippold describes claim 11.

23 *Claims 13, 16, 17, and 19 rejected under 35 U.S.C. § 103(a) as*
24 *unpatentable over Johnson and McConnell*

1 The Appellants first contend that (1) there is no reason or motivation to
2 combine Johnson and McConnell (App. Br. 14). We disagree with the
3 Appellants. Johnson is concerned with providing accurate information to
4 suppliers such that they can make better business and marketing decisions
5 (FF 01). Johnson addresses this concern by providing a system that provides
6 suppliers with consumer trend data specific to that supplier (FF 02).
7 McConnell is also concerned with enabling users to make good business
8 decisions (FF 05). McConnell solves this concern by providing a system
9 that monitors items and the movement of items to determine a probability
10 pattern describing the velocity of the item, thereby allowing users to
11 accurately plan inventory (FF 06). A person with ordinary skill in the art
12 would have recognized to combine the teachings of Johnson and McConnell
13 in order to make better business decisions by providing users with additional
14 information to base decisions on. As such, Johnson and McConnell are
15 concerned with the same problem and one of ordinary skill in the art would
16 have been led to combine their teachings.

17 The Appellants also contend that (2) Johnson and McConnell fail to
18 describe an automated assessment and neither reference suggests generation
19 of a targeted opportunity assessment and market analysis (App. Br. 15). The
20 Appellants specifically argue that the references fail to describe an
21 integrated category management report (App. Br. 15). We disagree with the
22 Appellants. The Examiner has relied on Johnson to describe the report, as
23 discussed *supra*, and as such the Appellants' argument does not persuade us
24 of error on the part of the Examiner because the Appellants are responding
25 to the rejection by attacking the references separately, even though the
26 rejection is based on the combined teachings of the references.

1 Nonobviousness cannot be established by attacking the references
2 individually when the rejection is predicated upon a combination of prior art
3 disclosures. *Id.*

4 **CONCLUSIONS OF LAW**

5 The Examiner did not err in rejecting claims 5-8, 10, 12, 15, and 18
6 under 35 U.S.C. § 102(e) as being anticipated by Johnson.

7 The Examiner did not err in rejecting claims 11 and 20 under 35 U.S.C.
8 § 103(a) as unpatentable over Johnson and Dippold.

9 The Examiner did not err in rejecting claims 13, 16, 17, and 19 under 35
10 U.S.C. § 103(a) as unpatentable over Johnson and McConnell.

11

12 **DECISION**

13 To summarize, our decision is as follows.

- 14 • The rejection of claims 5-8, 10, 12, 15, and 18 under 35 U.S.C.
15 § 102(e) as being anticipated by Johnson is sustained.
- 16 • The rejection of claims 11 and 20 under 35 U.S.C. § 103(a) as
17 unpatentable over Johnson and Dippold is sustained.
- 18 • The rejection of claims 13, 16, 17, and 19 under 35 U.S.C. § 103(a) as
19 unpatentable over Johnson and McConnell is sustained.

20

21 No time period for taking any subsequent action in connection with this
22 appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-010916
Application 10/002,566

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AFFIRMED

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6 mev

7

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